

### **REMARKS**

Claims 24 to 29, 34 to 38, 40, 41 and 43 to 46 were rejected under 35 U.S.C. §102(b) as being anticipated by Haug (DE 20000002).

Claims 30 to 33, 39 and 42 were objected to as being dependent upon a rejected base claim, but were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

New claim 47 is hereby added. Support is found for example in the specification at paragraph [0049] and in Figs. 7 to 9.

Reconsideration of the application based on the following is respectfully requested.

#### **Finality of Office Action**

Applicant's representative, Clint Mehall, spoke with the Examiner Nguyen on November 6, 2009 concerning the finality of the Office Action of July 6, 2009. Mr. Mehall informed Examiner Nguyen that the most recent Response to Office Action was filed on April 28, 2009 with a Request for Continued Examination and included amendments to the independent claims. Mr. Mehall also pointed out that because Haug (DE 20000002) is printed German and no translation of Haug (DE 20000002) was provided with the Office Action of July 6, 2009, MPEP 706.02, subsection II, precludes the Office Action of July 6, 2009 from being a final rejection. Examiner Nguyen admitted that the finality of the Office Action of July 6, 2009 was improper and stated that this Response to Office Action would be treated as a response to a non-final Office Action. Applicants thank Examiner Nguyen for his courtesy.

#### **English Translation**

As a courtesy to Examiner Nguyen, as discussed by Examiner Nguyen and Mr. Mehall, an English translation of Haug (DE 20000002) is provided herewith.

#### **Rejection under 35 U.S.C. § 102(b)**

Claims 24 to 29, 34 to 38, 40, 41 and 43 to 46 were rejected under 35 U.S.C. §102(b) as being anticipated by Haug (DE 20000002).

All references to Haug hereinafter refer to the English translation provided herewith. Haug discloses a suspension post 1 that includes a vertical body 2 having a C profile into which a support plate 3 having a U profile is pushed and fastened by rivets 4. (Page 4, lines 21 to 27). A pivoting element 5, which includes two bars 7 connected by bridges 8, is mounted in the U profile. (Page 4, lines 29 to 33). A guide 12 in which a locking wedge 13 is perpendicularly guided is fastened to the support plate 3. (Page 4, lines 37 to 39). In a closed position, the locking wedge 13 is pressed by a spring 14 into a wedge pocket 15. (Page 4, line 39 to page 5, line 2).

Independent claims 24, 34, 44 and 45 recite “a supporting element insertable between the fixing member and the counterbearing.”

It is respectfully submitted that Haug does not disclose the limitation of claims 24, 34, 44 and 45 of “a supporting element insertable between the fixing member and the counterbearing.” The Examiner alleges that one of bridges 8 corresponds to the “supporting element” of claims 24, 34, 44 and 45, wedge pocket 15 corresponds to the “fixing member” of claims 24, 34, 44 and 45 and guide 12 corresponds to the “counterbearing” of claims 24, 34, 44 and 45. It is respectfully submitted that neither the upper bridge 8 nor the lower bridge 8 of Haug is insertable between guide 12 and wedge pocket 15. As clearly shown in Fig. 4c, the upper bridge 8 can only be moved to above guide 12 and is not insertable between guide 12 and wedge pocket 15. Also, the lower bridge 8 can only be moved to below wedge pocket 15 and is clearly not insertable between guide 12 and wedge pocket 15. Thus, it is clear that in neither of bridges 8 insertable between guide 12 and wedge pocket 15 and Haug does not disclose this limitation of claims 24, 34, 44 and 45.

Based on the foregoing, withdrawal of the rejection under 35 U.S.C. 102(b) of claims 24 to 29, 34 to 38, 40, 41 and 43 to 46 is respectfully requested.

With further respect to claim 24, it is respectfully submitted that Haug does not disclose the “a supporting element insertable between the fixing member and the counterbearing, such that when the stanchion is locked, vertical forces are transmitted from the stanchion part through the counterbearing and the supporting element into the fixing member” as required by claim 24.

The two bridges 8 are connected by two vertical bars 7 of pivot member 5 in order to delimit a cut out that allows guide 12 and locking wedge 13 to protrude into the cut out without touching the pivot member. Because guide 12 does not contact either of bearings 8, vertical forces cannot be transmitted from suspension post 1 through guide 12 and either of bridges 8 into wedge pocket 14 and Haug also does not disclose this requirement of claim 24.

Additionally, it is respectfully submitted that contrary to the Examiner's statements in the Response to Arguments section of the Office Action of July 6, 2009, this requirement of claim 24 recites a specific structural relationship between the claimed "stanchion part," the "counterbearing," the "supporting element" and the "fixing member" and that the device of Haug "*could*" be capable of performing similar functions is not sufficient to support an anticipation rejection. The Examiner must show that Haug "necessarily" discloses the relationship required by claim 24 to establish that Haug anticipates this requirement of claim 24. (See MPEP 2112).

For this reason also, withdrawal of the rejection under 35 U.S.C. 102(b) of claim 24 and its dependent claims is respectfully requested.

With further respect to claim 25, it is respectfully submitted that Haug does not disclose "the supporting element comprises a lower boundary, which is matched in a form-fitting manner to the fixing member, and an upper boundary, which is matched in a form-fitting manner to the counterbearing" as recited in claim 25. The Examiner does not even attempt to establish where this limitation is disclosed in Haug or how a lower boundary of either of bridges 8 is matched in a form-fitting manner to wedge pocket 15 and how an upper boundary of either of bridges 8 is matched in a form-fitting manner to guide 12.

For this reason also, withdrawal of the rejection under 35 U.S.C. 102(b) of claim 25 is respectfully requested.

**CONCLUSION**

It is respectfully submitted that the application is in condition for allowance and Applicants respectfully request such action.

If any additional fees are deemed to be due at this time, the Assistant Commissioner is authorized to charge any payment of the same to Deposit Account No. 50-0552.

Respectfully submitted,

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